

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

UNITED STATES OF AMERICA)	
)	
)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Case No. 23-cr-00061-MN
)	
ROBERT HUNTER BIDEN)	
)	
)	
<i>Defendant.</i>)	
)	

MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF AND PROPOSED *AMICUS CURIAE* BRIEF OF THE HERITAGE FOUNDATION AND MIKE HOWELL

The Heritage Foundation and Mike Howell hereby move, pursuant to the inherent authority of the Court to accept *Amicus Curiae* briefs, to file an *Amicus Curiae* Brief. The proposed *Amicus Curiae* Brief is attached as Exhibit C.

I. Standard for Permissive *Amicus* Briefing in District Courts

1. *Amici* are unaware of any rule governing *Amicus* briefing in the United States District Courts. Federal Rule of Appellate Procedure (“Fed.R.App.P.”) 29 provides guidance and permits filing of a brief by leave of court. A motion for leave to file pursuant to Rule 29 must state 1.) the movant’s interest; and 2.) the reasons why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case. Fed.R.App.P. 29(a)(3).

2. District courts possess the inherent authority to accept or deny *Amicus* briefing. *In re Nazi Era Cases Against German Defendants’ Litig.*, 153 Fed. App’x. 819, 827 (3rd Cir. 2005 (per curiam)). In the Third Circuit, *Amici* have been accepted in the District Courts in both civil and criminal proceedings. See *In re Nazi Era Cases Against German Defendants’ Litig.*, 153 Fed.

App/x 819 (3rd Cir. 2005); *Getty Oil Co. v. Dep’t of Energy*, 117 F.R.D. 540 (D. Del. 1987); *In re: Energy Future Holdings Corp*, No. 15-cv-1183-RGA, 2016 WL 5402186 (D. Del. Sept. 26, 2016); *Glen v. Trip Advisor LLC*, 529 F.Supp.3d 316 (2021); *US v. Alkaabi*, 223 F.Supp.2d 583 (D.N.J. 2002).

3. “Courts will exercise their discretion to allow an amicus curiae brief to be filed if Rule 29 of the [Fed.R.App.P.] is satisfied by demonstrating, under the most lenient standard, that (1) the movant has an adequate interest in the appeal; (2) the information supplied is desirable; and (3) the information being provided is relevant. Courts will deny leave in instances where the arguments and facts in the brief are patently partisan, are untimely, and where the litigant is competently and adequately represented. The Third Circuit has advised that motions for leave to file such briefs should be granted ‘unless it is obvious that the proposed briefs do not meet [Federal Rule of Civil Procedure] 29’s criteria as broadly interpreted.’” (citation omitted). *In re Weinstein Company Holdings LLC*, Civ. No. 19-242-MN, Civ. No. 19-243, 2020 WL 1320821 at *1 n.3 (D. Del. Mar. 30, 2020).

II. The Heritage Foundation and Mike Howell Have an Adequate Interest and Provide Desirable and Relevant Information to the Court

4. The Heritage Foundation is a Washington, D.C.-based nonpartisan public policy organization with a national and international reputation whose mission is to “formulate and promote public policies based on the principles of free enterprise, limited government, individual freedom, traditional American values, and a strong national defense.” Heritage Foundation, *About Heritage*, found at <https://www.heritage.org/about-heritage/mission> (last visited July 19, 2023).

5. Mike Howell leads the Heritage Foundation’s Oversight Project and is an author for *The Daily Signal*. The Oversight Project is an initiative aimed at obtaining information via Freedom of Information Act requests and other means in order to best inform the public and

Congress for the purposes of Congressional oversight. The requests and analyses of information are informed by Heritage's deep policy expertise. By function, the Oversight Project is primarily engaged in disseminating information to the public.

6. In the accompanying proposed *Amicus* brief, the Heritage Foundation and Mike Howell offer information that has not, and likely will not, be presented to the Court by either the Government or the Defendant. The proposed Brief presents the widely reported facts of the Robert Hunter Biden investigation, lays out a detailed historiography of the Congressional investigations into the Hunter Biden investigation, including the conflicts between the public statements and testimony of Attorney General Merrick Garland, U.S. Attorney for the District of Delaware David C. Weiss, and the IRS Whistleblowers Gary Shapley and Jeff Zeigler, and provides information that the Heritage Foundation and Mike Howell are aware of as a result of their FOIA litigation with the United States Department of Justice. *Amici* submit that this combination of publicly available information, provided in a unique well-crafted summary could be of great use to the Court.

7. *Amici* suggest that the proposed Brief is of greater relevance to *this* proceeding because neither the Government nor the Defendant have an interest in disclosure. The Defendant's reticence to disclosure is intuitive; the costs far outweigh the benefits of revealing that the Defendant may benefit from partiality from the Government. The Government's obstinance is less understandable. The proposed *Amicus* Brief addresses, in detail, the stonewalling not only of the *Amici* but of the United States Congress. The Brief addresses that in the course of FOIA litigation in another jurisdiction that the Department of Justice disclosed that there were more than 2500 pages of potentially responsive documents concerning communications between the District of Delaware and the Department of Justice in Washington D.C. The lack of transparency raises very

real questions that would not otherwise arise. As such, *Amici* ask the Court to consider this stonewalling and breadth of available documents in its review of the plea agreement and determine if a delay of the proceeding until more information as to the who, what, where, when, and how of the investigation is disclosed.

8. Information related to this investigation has been changing on a daily basis. *Amici* wanted the Court to have the most up-to-date information and given the posture of the FOIA litigation in the U.S. District Court for the District of Columbia and Congressional hearing landscape, it was not practicable to submit the proposed Brief any earlier.

9. The undersigned hereby certifies that she conferred with counsel for the Defendant and for the Government to obtain their position on the relief requested in this Motion. Counsel for the Defendant opposes this Motion and such opposition is attached as Exhibit A to this Motion; counsel for the Government consented to this Motion and such consent is attached as Exhibit B.¹

WHEREFORE, proposed *Amici Curiae* The Heritage Foundation and Mike Howell respectfully move for entry of an Order accepting the accompanying *Amicus Curiae* Brief in this case.

¹ The Government consented to this Motion provided the Motion and accompanying brief were filed by the “close of business” July 24, 2023. Unfortunately, it simply was not possible to meet that deadline.

Dated: July 25, 2023

Respectfully submitted,

LAW OFFICES OF
MURRAY, PHILLIPS & GAY

/s/ Julianne E. Murray

Julianne E. Murray
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Georgetown, DE 19947
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Counsel for *Amici The Heritage Foundation and Mike Howell*

Julie Murray

From: Christopher Clark <clark@csvllp.com>
Sent: Monday, July 24, 2023 9:54 AM
To: Julie Murray; benjamin.wallace2@usdoj.gov; derek.hines@usdoj.gov; leo.wise@usdoj.gov; rjones@bergerharris.com; brian.mcmanus@lw.com; matthew.salerno@lw.com; timothy.mccarten@lw.com
Subject: Re: USA v. Biden Amicus

Ms. Murray,

On behalf of the defendant we oppose your proposed application for leave to file an amicus brief in the above-referenced case, please provide this communication to the Court with any application you file.

As an initial matter, a change of plea proceeding between the Government and a defendant is not an appropriate proceeding for the intervention of an amicus, and we are aware of no precedent supporting such an application. We therefore object on this basis.

Furthermore, your communication fails to identify (as is required) the interest the purported amici has in this proceeding and the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.

Moreover, the proposed relief the purported amicus claims to be seeking is without basis in law or fact and would only serve to burden the court with baseless argument.

Finally, the application is untimely. The change of plea proceeding has been scheduled for more than one month. You propose to file an amicus with less than one business day for the parties and the court to review your submission and respond. Under the circumstances, this delay can only be seen as gamesmanship but in any event it renders your application untimely.

For the reasons above and reserving all rights, the defendant opposes your proposed application.

Best,

Christopher J. Clark
Clark Smith Villazor LLP
250 West 55th Street
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(212) 582-4400(o)
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From: Julie Murray <julie@murrayphillipslaw.com>
Sent: Saturday, July 22, 2023 9:08 PM
To: benjamin.wallace2@usdoj.gov <benjamin.wallace2@usdoj.gov>; derek.hines@usdoj.gov <derek.hines@usdoj.gov>; leo.wise@usdoj.gov <leo.wise@usdoj.gov>; Christopher Clark <clark@csvllp.com>; rjones@bergerharris.com <rjones@bergerharris.com>; brian.mcmanus@lw.com <brian.mcmanus@lw.com>; matthew.salerno@lw.com <matthew.salerno@lw.com>

<matthew.salerno@lw.com>; timothy.mccarten@lw.com <timothy.mccarten@lw.com>

Subject: [EXTERNAL EMAIL] USA v. Biden Amicus

Good Evening Gentlemen:

I have been retained by the Heritage Foundation and Mike Howell to seek leave to file an Amicus Brief in opposition of the Court accepting the plea agreement at this time in USA v. Biden, Case No. 23-cr-00061-MN.

As you know, I must ask the position of all counsel and include that position in my Motion seeking leave.

Accordingly, I ask that you respond by noon on Monday, July 24, 2023.

Best regards,

Julianne E. Murray, Esq.
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Julie Murray

From: Wallace, Benjamin (USADE) <Benjamin.Wallace2@usdoj.gov>
Sent: Monday, July 24, 2023 11:36 AM
To: Julie Murray; Hines, Derek (USAPAE); Wise, Leo (USAMD); clark@csvllp.com; rjones@bergerharris.com; brian.mcmanus@lw.com; matthew.salerno@lw.com; timothy.mccarten@lw.com
Subject: RE: USA v. Biden Amicus

Ms. Murray:

The government consents to your filing of an amicus brief, provided the brief is filed by close of business today, July 24.

Best,

Benjamin L. Wallace

Assistant U.S. Attorney

Email: benjamin.wallace2@usdoj.gov
Office: 302-573-6118 | Mobile: 302-304-5232

U.S. Attorney's Office | District of Delaware
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From: Julie Murray <julie@murrayphillipslaw.com>

Sent: Saturday, July 22, 2023 9:09 PM

To: Wallace, Benjamin (USADE) <BWallace1@usa.doj.gov>; Hines, Derek (USAPAE) <DHines@usa.doj.gov>; Wise, Leo (USAMD) <lwise@usa.doj.gov>; clark@csvllp.com; rjones@bergerharris.com; brian.mcmanus@lw.com; matthew.salerno@lw.com; timothy.mccarten@lw.com

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Best regards,

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